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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,263	06/07/2006	Frank Lehnert	Belimo P1013 US	4664
37138	7590	05/21/2009	EXAMINER	
THADDIUS J. CARVIS 102 NORTH KING STREET LEESBURG, VA 20176			MILLER, SAMANTHA A	
			ART UNIT	PAPER NUMBER
			3749	
			MAIL DATE	DELIVERY MODE
			05/21/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/596,263

Applicant(s)

LEHNERT, FRANK

Examiner

SAMANTHA A. MILLER

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Amendment

Receipt of applicant's amendment filed on 2/26/2009 is acknowledged.

Election/Restrictions

Newly submitted claim 19 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claim 1 is a device for controlling airflow while claim 19 is now directed to a fastening web and does not have all the limitations of claim 1 making it a separate invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 19 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCabe (2001/0055947) in view of STONE (2001/0027814).

1. One or more air flaps which can be actuated synchronously and which prevent the air flow in the ventilating pipe in closed position, whereing each of the one or more

air flaps is connected to a drive axle, a fastening web (See Examiner Figure A below) with a pivot bearing (66) (See Examiner Figure A below) for the drive axle (38) (See Examiner Figure A below) of the one or more air flap(s) (See Examiner Figure A below) and means (the motor, para.0068) (See Examiner Figure A below) for transmitting force and/or torque to the drive axle (para.0068) (See Examiner Figure A below) connected to the one or more air flap(s) (See Examiner Figure A below) are arranged in the ventilating pipe (Fig.8), on a longitudinally extending plane of symmetry, wherein the same fastening web (See Examiner Figure A below) fitted with various air flaps (See Examiner Figure A below) can be used for cross-sectionally differently dimensioned ventilating pipes (Fig.1 and Fig.8).

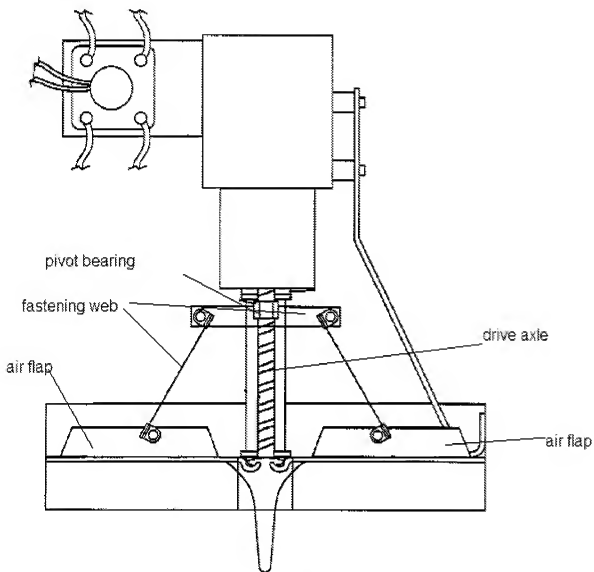


FIG. A Examiner provided figure 9 from McCabe

2. The fastening web is fixed inside the ventilation pipe at the angle of 15 to 90°
(See Examiner Figure A, web's are at 45°).
5. The fastening web is detachably fastened at both ends to the pipe wall (Fig.6).

6. The actuator (the motor, para.0068) of the drive axle(s) (38) is integrated at least partially into the fastening web (See Examiner Figure A), for rotation movement of the drive axle.

7. The actuator (the motor, para.0068) acts on the drive axle(s) (38) by way of a reducing gear (50) (para.0065).

8. The control electronics (62, 38) are installed at least partially in the fastening web (See Examiner Figure A).

10. A fastening point is provided, in each case, on the drive axle (38) on either side of the fastening web (See Examiner Figure A) for the one or more air flap(s) (See Examiner Figure A).

11. The drive axles (38) of the one or more air flap(s) (See Examiner Figure A) are lengthened for centring thereof on either side of the pipe wall (Fig.8) and are supported there.

12. The one or more air flaps are blade-shaped (See Examiner Figure A) can be folded over parallel to the drive axle (Fig.6).

13. The gap (Fig.8) of the blade-shaped air flap (See Examiner Figure A) has three-dimensional means, in particular sealing hoods (154) for sealing until the closed position is reached (para.0084).

14. The blade-shaped air flap (See Examiner Figure A) is configured with a continuous gap (Fig.8) for the fastening web, in one piece with a gap or with joined halves with a gap (Fig.8).

15. A monitor (142,150,152) visually displays the flap position.

16. Measuring cells (142,150,152) for measuring the differential pressure, the volume flow and/or a position of the air flap, wherein the measuring cells are arranged on the fastening web (para.0081).

Regarding claims 17-18, refer to the rejection of claims 1-16.

McCabe teaches the invention as discussed above, however McCabe does not teach the fastening web that has an angle that is dependent on the diameter of the ventilation pipe, to be detachable at one end and so as to be pivotable in the plane of symmetry on the pipe wall, or streamlined preferably round or prismatic and is provided with rounded edges.

STONE teaches:

1. The fastening web (52A, 52B) and said means for transmitting force (54b) are arranged in the ventilating pipe (Fig.2), on a longitudinally extending plane of symmetry (Fig.9), wherein the same fastening web is fixed (54A) inside the ventilating pipe at an angle (Fig.9), wherein said angle of the fastening web is defined relative to a longitudinal axis of the ventilating pipe or relative to a wall of the ventilating pipe, and wherein said angle is dependent on the diameter of the ventilating pipe, such that the same fastening web fitted with various air flaps can be used for cross-sectionally differently dimensioned ventilating pipes (para.0033).

3. The fastening web is fastened by a holder so as to be detachable at one end (54C, 54D) and so as to be pivotable in the plane of symmetry on the pipe wall (Fig.9).

4. The fastening web extends over the entire cross-section of the ventilation pipe (in a closed position) and rests at a free end (54C) with a support face on the pipe wall of the pipe (Fig.9).

9. The fastening web is streamlined, preferably round or prismatic and is provided with rounded edges (Fig.9) to avoid a significant drop in pressure in the ventilating pipe and to avoid the formation of undesired turbulence.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified that damper of McCabe in view of the fastening webs of STONE in order to produce a low resistance airfoil in the open position effectively seal the vanes when closed smooth transition from a no flow condition to a flow condition, or from a full flow condition to a partially-closed position (STONE, para.0032-0033).

Response to Arguments

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR '1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272 9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/596,263

Page 9

Art Unit: 3749

Samantha Miller

Examiner

Art Unit 3749

5/11/2009

/Steven B. McAllister/

Supervisory Patent Examiner, Art Unit 3749